

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99-433, see section 1314(e) of Pub. L. 100-180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 effective Jan. 1, 1987, see section 101(c) [§961(c)] of Pub. L. 99-500 and Pub. L. 99-591, and section 961(c) of Pub. L. 99-661, set out as a note under section 2432 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1983, and applicable beginning with respect to reports for first quarter of fiscal year 1983, see section 1107(c) of Pub. L. 97-252, set out as a note under section 2432 of this title.

§ 2433a. Critical cost growth in major defense acquisition programs

(a) REASSESSMENT OF PROGRAM.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated subprogram (as determined by the Secretary under section 2433(d) of this title) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

(1) determine the root cause or causes of the critical cost growth in accordance with applicable statutory requirements and Department of Defense policies, procedures, and guidance; and

(2) in consultation with the Director of Cost Assessment and Program Evaluation, carry out an assessment of—

(A) the projected cost of completing the program if current requirements are not modified;

(B) the projected cost of completing the program based on reasonable modification of such requirements;

(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

(D) the need to reduce funding for other programs due to the growth in cost of the program.

(b) PRESUMPTION OF TERMINATION.—(1) After conducting the reassessment required by subsection (a) with respect to a major defense acquisition program, the Secretary shall terminate the program unless the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title is required to be submitted under section 2432(f) of this title, a written certification in accordance with paragraph (2).

(2) A certification described by this paragraph with respect to a major defense acquisition program is a written certification that—

(A) the continuation of the program is essential to the national security;

(B) there are no alternatives to the program which will provide acceptable capability to

meet the joint military requirement (as defined in section 181(g)(1) of this title) at less cost;

(C) the new estimates of the program acquisition unit cost or procurement unit cost have been determined by the Director of Cost Assessment and Program Evaluation to be reasonable;

(D) the program is a higher priority than programs whose funding must be reduced to accommodate the growth in cost of the program; and

(E) the management structure for the program is adequate to manage and control program acquisition unit cost or procurement unit cost.

(3) A written certification under paragraph (2) shall be accompanied by a report presenting the root cause analysis and assessment carried out pursuant to subsection (a) and the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), together with supporting documentation.

(c) ACTIONS IF PROGRAM NOT TERMINATED.—(1) If the Secretary elects not to terminate a major defense acquisition program pursuant to subsection (b), the Secretary shall—

(A) restructure the program in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a), and ensures that the program has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E);

(B) rescind the most recent Milestone approval for the program and withdraw any associated certification under section 2366a or 2366b of this title;

(C) require a new Milestone approval for the program before taking any contract action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the program, except to the extent determined necessary by the Milestone Decision Authority, on a non-delegable basis, to ensure that the program can be restructured as intended by the Secretary without unnecessarily wasting resources;

(D) include in the report specified in paragraph (2) a description of all funding changes made as a result of the growth in cost of the program, including reductions made in funding for other programs to accommodate such cost growth; and

(E) conduct regular reviews of the program in accordance with the requirements of section 205 of the Weapon Systems Acquisition Reform Act of 2009.

(2) For purposes of paragraph (1)(D), the report specified in this paragraph is the first Selected Acquisition Report for the program submitted pursuant to section 2432 of this title after the President submits a budget pursuant to section 1105 of title 31, in the calendar year following the year in which the program was restructured.

(3)(A) The requirements of subparagraphs (B), (C), and (E) of paragraph (1) shall not apply to a program or subprogram if—

(i) the Milestone Decision Authority determines in writing, on the basis of a cost assess-

ment and root cause analysis conducted pursuant to subsection (a), that—

(I) but for a change in the quantity of items to be purchased under the program or subprogram, the program acquisition unit cost or procurement unit cost for the program or subprogram would not have increased by a percentage equal to or greater than the cost growth thresholds for the program or subprogram set forth in subparagraph (B); and

(II) the change in quantity of items described in subclause (I) was not made as a result of an increase in program cost, a delay in the program, or a problem meeting program requirements;

(ii) the Secretary determines in writing that the cost to the Department of Defense of complying with such requirements is likely to exceed the benefits to the Department of complying with such requirements; and

(iii) the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title is required to be submitted under section 2432(f) of this title—

(I) a copy of the written determination under clause (i) and an explanation of the basis for the determination; and

(II) a copy of the written determination under clause (ii) and an explanation of the basis for the determination.

(B) The cost growth thresholds specified in this subparagraph are as follows:

(i) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(I) 5 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(ii) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(I) 5 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(d) ACTIONS IF PROGRAM TERMINATED.—If a major defense acquisition program is terminated pursuant to subsection (b), the Secretary shall submit to Congress a written report setting forth—

(1) an explanation of the reasons for terminating the program;

(2) the alternatives considered to address any problems in the program; and

(3) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.

(Added Pub. L. 111-23, title II, § 206(a)(1), May 22, 2009, 123 Stat. 1726; amended Pub. L. 111-383, div. A, title X, § 1075(b)(35), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112-81, div. A, title VIII, §§ 801(e)(4), 831, Dec. 31, 2011, 125 Stat. 1484, 1503; Pub. L. 112-239, div. A, title VIII, § 813, Jan. 2, 2013, 126 Stat. 1829.)

REFERENCES IN TEXT

Section 205 of the Weapon Systems Acquisition Reform Act of 2009, referred to in subsec. (c)(1)(E), is section 205 of Pub. L. 111-23, which amended section 2366b of this title and enacted provisions set out as notes under this section and section 2366b of this title.

AMENDMENTS

2013—Subsec. (c)(3)(A). Pub. L. 112-239 substituted “subparagraphs (B), (C), and (E)” for “subparagraphs (B) and (C)” in introductory provisions.

2011—Subsec. (b)(2)(B). Pub. L. 111-383 substituted “section 181(g)(1)” for “section 181(g)(1)”.

Subsec. (c)(1)(B), (C). Pub. L. 112-81, § 801(e)(4), struck out “, or Key Decision Point approval in the case of a space program,” after “Milestone approval”.

Subsec. (c)(3). Pub. L. 112-81, § 831, added par. (3).

REVIEWS OF PROGRAMS RESTRUCTURED AFTER EXPERIENCING CRITICAL COST GROWTH

Pub. L. 111-23, title II, § 205(c), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111-383, div. A, title VIII, § 813(e), title X, § 1075(k)(2), Jan. 7, 2011, 124 Stat. 4266, 4378, provided that: “The official designated to perform oversight of performance assessment pursuant to section 103 of this Act [set out as a note under section 2430 of this title], shall assess the performance of each major defense acquisition program that has exceeded critical cost growth thresholds established pursuant to section 2433(e) of title 10, United States Code, but has not been terminated in accordance with section 2433a of such title (as added by section 206(a) of this Act) not less often than semi-annually until one year after the date on which such program receives a new milestone approval, in accordance with section 2433a(c)(1)(C) of such title (as so added). The results of reviews performed under this subsection shall be reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics and summarized in the next annual report of such designated official.”

[Pub. L. 111-383, div. A, title VIII, § 813(e), Jan. 7, 2011, 124 Stat. 4266, provided that the amendment made by section 813(e) to section 205(c) of Pub. L. 111-23, set out above, is effective as of May 22, 2009, and as if included in Pub. L. 111-23, as enacted.]

[For definition of “major defense acquisition program” as used in section 205(c) of Pub. L. 111-23, set out above, see section 2(2) of Pub. L. 111-23, set out as a note under section 2430 of this title.]

[§ 2434. Repealed. Pub. L. 114-328, div. A, title VIII, § 842(c)(1), Dec. 23, 2016, 130 Stat. 2290]

Section, added Pub. L. 98-94, title XII, § 1203(a)(1), Sept. 24, 1983, 97 Stat. 682, § 139c; renumbered § 2434 and amended Pub. L. 99-433, title I, §§ 101(a)(5), 110(d)(15), (g)(9), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99-661, div. A, title XII, § 1208(a)-(c)(1), Nov. 14, 1986, 100 Stat. 3975; Pub. L. 100-26, § 7(b)(5), Apr. 21, 1987, 101 Stat. 279; Pub. L. 100-180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100-456, div. A, title V, § 525, Sept. 29, 1988, 102 Stat. 1975; Pub. L. 102-190, div. A, title VIII, § 801(a), (b)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 103-355, title III, § 3004, Oct. 13, 1994, 108 Stat. 3330; Pub. L. 104-106, div. A, title VIII, § 814, Feb. 10, 1996, 110 Stat.